

**TOWN OF FOUNTAIN HILLS
MINUTES OF THE EXECUTIVE AND REGULAR SESSION OF THE
FOUNTAIN HILLS TOWN COUNCIL
August 6, 2009**

• **CALL TO ORDER**

Mayor Schlum called the Executive Session to order at 5:37 p.m. in the Fountain Hills Town Hall Fountain Conference Room.

AGENDA ITEM #1 – ROLL CALL AND VOTE TO GO INTO EXECUTIVE SESSION.

Present for roll call were the following members of the Fountain Hills Town Council: Mayor Schlum, Councilmember Contino, Councilmember Hansen, Vice Mayor Leger, Councilmember Brown, Vice Mayor Archambault and Councilmember Dickey. Town Attorney Andrew McGuire, Town Manager Rick Davis, Planning and Zoning Director Richard Turner, and Town Clerk Bev Bender were also present.

VOTE TO GO INTO EXECUTIVE SESSION: (i) PURSUANT TO A.R.S. §38-431.03(A)(4), DISCUSSION OR CONSULTATION WITH THE ATTORNEYS OF THE PUBLIC BODY IN ORDER TO CONSIDER ITS POSITION AND INSTRUCT ITS ATTORNEYS REGARDING THE PUBLIC BODY'S POSITION REGARDING CONTRACTS THAT ARE THE SUBJECT OF NEGOTIATIONS, IN PENDING OR CONTEMPLATED LITIGATION OR IN SETTLEMENT DISCUSSIONS CONDUCTED IN ORDER TO AVOID OR RESOLVE LITIGATION (SPECIFICALLY, (i) THE FOUNTAIN HILLS RESORT DEVELOPMENT AGREEMENT AND (ii) THE FIREROCK TAX LITIGATION).

Councilmember Leger **MOVED** to convene the Executive Session and Councilmember Archambault **SECONDED** the motion, which **CARRIED UNANIMOUSLY** (7-0).

Councilmember Hansen left the meeting at 6:01 p.m. due to a conflict of interest on the second discussion item and Accounting Supervisor Mary Martin entered.

AGENDA ITEM #2 - ADJOURN TO REGULAR SESSION

Mayor Schlum adjourned the Executive Session at 6:15 p.m.

REGULAR SESSION AGENDA

* **CALL TO ORDER AND PLEDGE OF ALLEGIANCE**

Mayor Schlum called the meeting to order at 6:30 p.m. in the Fountain Hills Town Hall Council Chambers.

* **INVOCATION** - Fountain Hills' Town Manager Rick Davis

* **ROLL CALL**

Present for roll call were the following members of the Fountain Hills Town Council: Mayor Schlum, Councilmember Contino, Councilmember Leger, Councilmember Brown, Councilmember Hansen, Vice Mayor Archambault and Councilmember Dickey. Town Manager Rick Davis, Town Attorney Andrew McGuire and Town Clerk Bev Bender were also present.

* **MAYOR'S REPORT**

- (i) Mayor Schlum will read a proclamation declaring August 2009 "Drowning Impact Awareness" Month.

Mayor Schlum read a proclamation declaring August 1st through August 31st, 2009 as "Drowning Impact Awareness" month in the Town of Fountain Hills. The Mayor thanked everyone who attended the meeting in support of this proclamation and said that he appreciated their focus on this important issue.

* **SCHEDULED PUBLIC APPEARANCES**

- (i) Presentation by Don Rerick, Planning and Project Management Division with Maricopa County Flood Control District regarding public outreach and education.

Don Rerick with the Maricopa County Flood Control District Planning and Project Management Division addressed the Council relative to this item. Mr. Rerick highlighted a brief PowerPoint presentation and noted that the purpose of the District was the identification of flood hazards and problems, regulation of floodplains and development, County water course and drainage planning; education for flood prevention and safety, construction of flood control structures and facilities, flood warning and early detection and maintenance and operation of completed structures.

Mr. Rerick discussed the District's mission vision, strategic programs, District/Town Partnerships, engineering services, alert stations, floodplain management services and public outreach and education. Mr. Rerick indicated his willingness to respond to questions from the Council.

Mayor Schlum thanked Mr. Rerick for his presentation.

The Mayor announced that last year, under the new Town Manager with assistance from excellent staff, the Town had finished "in the black" for the Fiscal Year and congratulated staff on this significant achievement during difficult economic times. He also thanked the citizens who had contributed by volunteering their time and efforts to achieve this goal.

- (ii) Department Division Information Overview of Services provided - Lori Gary, Economic Development Administrator.

Economic Development Administrator Lori Gary addressed the Council and highlighted a brief PowerPoint presentation. Ms. Gary stated that economic development sustained economic health, the Town's tax base and the overall quality of life in Town. She stressed the importance of investing in attracting companies and generating revenue as well as investing in retention and creating competitive advantages. She also noted that economic development provided financial strength to support and service the community's needs. Ms. Gary advised that the three areas of economic development focus included (1) business attraction; (2) business retention and (3) business vitality and expanded upon these three critical areas. She advised that the economic development goals, which coincided with Council goals, included job creation, job retention, tax base diversification, increasing property values, expanding wealth, economic stability, economic self-sufficiency and enhancing the quality of life for citizens. Ms. Gary indicated her willingness to respond to questions from the Council.

Mayor Schlum thanked Ms. Gary for her presentation and said that she had been doing an excellent job in this area.

CALL TO THE PUBLIC

None.

CONSENT AGENDA

AGENDA ITEM #1 - CONSIDERATION OF APPROVING THE TOWN COUNCIL MEETING MINUTES FROM JULY 2, 2009.

AGENDA ITEM #2 - CONSIDERATION OF THE FIRST AMENDMENT TO THE OPTION AND LEASE AGREEMENT BETWEEN THE TOWN OF FOUNTAIN HILLS AND NEW CINGULAR WIRELESS PCS, LLC F/K/A/ AT&T WIRELESS PCS, LLC.

AGENDA ITEM #3 - CONSIDERATION OF APPROVING A LIQUOR LICENSE APPLICATION SUBMITTED BY LAUREN JOHN VINCENT GIGER FOR J&S RESTAURANTS (DBA FOUNTINI'S BAR & GRILL), LOCATED AT 13407 N. LA MONTANA DRIVE, FOUNTAIN HILLS, AZ. THIS IS FOR A SERIES 12 LICENSE (RESTAURANT).

AGENDA ITEM #4 - CONSIDERATION OF APPROVING A LIQUOR LICENSE APPLICATION SUBMITTED BY LAUREN KAY MERRETT, FOR JALM, LLC (DBA THE CROSSINGS, AN ITALIAN CANTINA), LOCATED AT 16852 E. PARKVIEW AVENUE, FOUNTAIN HILLS, AZ. THIS IS FOR A SERIES 12 LICENSE (RESTAURANT).

AGENDA ITEM #5 - CONSIDERATION OF AN EXTENSION OF TIME FOR AN APPROVED UTILITY DISTURBANCE PERMIT FOR "LA BELLA VITA AT FIREROCK," AT PARCEL "B" OF FIREROCK. CASE #UDP2008-01.

AGENDA ITEM #6 - CONSIDERATION OF AMENDING THE FY08-09 NICHOLS AND SONS LANDSCAPE MAINTENANCE CONTRACT BY APPROVING CHANGE ORDER #2009-01, IN THE AMOUNT OF \$3,736.95.

AGENDA ITEM #7 - CONSIDERATION OF APPOINTING COUNCILMEMBER BROWN, COUNCILMEMBER DICKEY AND VICE MAYOR ARCHAMBAULT TO SERVE ON THE TOWN COUNCIL REVIEW SUBCOMMITTEE FOR THE PURPOSE OF REVIEWING APPLICATIONS, INTERVIEWING APPLICANTS AND SUBMITTING A RECOMMENDATION TO THE MAYOR FOR APPOINTMENTS TO THE PLANNING AND ZONING COMMISSION.

AGENDA ITEM #8 - CONSIDERATION OF APPOINTING COUNCILMEMBER HANSEN, COUNCILMEMBER CONTINO AND COUNCILMEMBER LEGER TO SERVE ON THE TOWN COUNCIL REVIEW SUBCOMMITTEE FOR THE PURPOSE OF REVIEWING APPLICATIONS, INTERVIEWING APPLICANTS AND SUBMITTING A RECOMMENDATION TO THE MAYOR FOR APPOINTMENTS TO THE PUBLIC SAFETY ADVISORY COMMISSION.

Vice Mayor Archambault **MOVED** to approve the Consent Agenda as listed and Councilmember Brown **SECONDED** the motion.

A roll call vote was taken with the following results:

Councilmember Dickey	Aye
Mayor Schlum	Aye
Councilmember Leger	Aye
Councilmember Hansen	Aye
Councilmember Contino	Aye
Councilmember Brown	Aye
Vice Mayor Archambault	Aye

The motion **CARRIED UNANIMOUSLY** (7-0).

REGULAR AGENDA

AGENDA ITEM #9 - PRESENTATION BY AUDRA KOESTER-THOMAS, CHAIR OF THE STRATEGIC PLANNING ADVISORY COMMISSION AND DISCUSSION OF THE STRATEGIC PLAN UPDATE WORKING PAPER #1: STRATEGIC PLAN GAP ANALYSIS.

Town Manager Rick Davis stated that they were near the end of the term that had been assigned to the first Strategic Plan and said that during that time many changes had taken place. He added that as the gap analysis had begun to come forward, the feedback from the public clearly showed that there were some new and existing priorities that they were going to need to address in the future. Mr. Davis added that was it an honor to work with the members of the Strategic Planning Advisory Commission (SPAC) and said that under Ms. Koester-Thomas's leadership they had made tremendous progress towards putting together a quality product. He advised that the first manifestation of this product was being presented this evening to the Council by Ms. Koester-Thomas.

Mayor Schlum welcomed Chairman Koester-Thomas and other members of the SPAC to the meeting and thanked them for their hard work on this first step.

Audra Koester-Thomas, Chairman of the SPAC, addressed the Council relative to this agenda item and thanked the Council for the opportunity to address them this evening. She recognized those Commissioners who were present: Alan Magazine, Charlotte McCluskey, and Katie Myhr and thanked the Town Manager and Shaunna Williams for their assistance. Ms. Koester-Thomas highlighted an extensive PowerPoint presentation relative to this agenda item. She advised that the SPAC had completed Phase I of the Strategic Plan Update, i.e. evaluating the current Fountain Hills Strategic Plan and conducting a gap analysis. She noted that this would be the first of three milestone reports delivered to the Council by the SPAC prior to presenting the completed Strategic Plan Update to the Council for adoption.

Ms. Koester-Thomas explained that a Strategic Plan was a process by which an organization or municipality envisioned its future and developed goals, objectives and strategies to achieve that future. She also discussed "Vision" - the ideal desired condition of the community at some future point in time and "Goals, Objectives and Policies" - ways to achieve the Vision. She advised that a Strategic Plan was integrated into the day-to-day organizational operations of the Town and emphasized that the Plan must remain current and relevant through regular review and updates.

Discussion ensued relative to the history behind the Strategic Plan (2006-2010); focus areas; strategic priorities/activities; the composition of the SPAC; the "why, how and when's" of the Strategic Plan Update; the actual Strategic Plan Update process (Phase I: Strategic Plan Audit (June-July 2009: Strategic Plan Gap Analysis, Phase II: Education and Affirmation (August-November 2009: Strategic Vision; Phase III: Construction (November 2009-February 2010): Draft Plan Update and Phase IV: Plan adoption; evaluating the current Strategic Plan and identifying "gaps;" activities, changes, challenges, citizens' likes and dislikes, emerging values and gaps; provided additional information/clarification relative to the Strategic Plan Update Working Paper #1 - Strategic Pan Gap Analysis and discussed the Committee's efforts to develop a user-friendly document as requested by the Council.

Ms. Koester-Thomas thanked the Council for their support and for the opportunity to address them this evening.

The Mayor reiterated his appreciation to Ms. Koester-Thomas and the members of the SPAC.

Councilmember Contino thanked Ms. Koester-Thomas for presenting the Committee's report and said that it was probably one of the most comprehensive reports the Council had received in a long time. He also thanked the members for all of the time and effort they had put into this project.

Ms. Koester-Thomas thanked the volunteer members of the SPAC for their significant contributions.

Councilmember Hansen said that she really appreciated the in-depth comments the SPAC was following up on.

Vice Mayor Archambault said that Ms. Koester-Thomas had touched a little bit on reaching out to the people who did not have a chance to participate in the Strategic Plan the first time around and requested additional information on how they planned to achieve this goal.

Ms. Koester-Thomas replied that when they had originally done their recognizance effort, they determined that it would be more beneficial to hold fewer formal meetings (public sessions and hearings) because people just did not have the time to attend them. She said that they were trying to find unique ways to get to people where they were already at as opposed to inviting them to come to them. She advised that they had a long list of organizations that they had been meeting with, including the Boys and Girls Club and Fountain Hills High School in an effort to mirror the five issue forums in the youth setting. She added that they were also providing electronic opportunities for people to communicate with them and said that helping those citizens virtually participate in the process was extremely important. She noted that they had received a great response as a result of their first feedback session and said that a lot of the comments were provided on line. She advised that other citizens indicated that they liked the discussions and having the opportunity to hear other people's opinions and so they were going to continue that effort to get out and meet with people and organizations where they were at. She advised that Ms. Decker was assisting in the goal of meeting with the high school students (Ms. Decker's Phase II major task).

Councilmember Dickey said that she had noticed that there were no price tags and expressed that she was glad about that because during the first session after a while they had started to look at the ones that were going to cost a lot and she thought that might have hampered efforts. She added that she appreciated the comments about the downtown area and said that she would really like to know what people wanted to see happen.

Councilmember Leger stated that he had the opportunity to not only review their document but the document in its entirety, including all of their statements and he believed they had done an incredible and professional job. He added that he had great respect for the SPAC and would be relying on their expertise. He said that he did have a lot of questions and he suggested that perhaps he and Ms. Koester-Thomas could get together and talk more about some of the methodology. He stated that he did have a couple of observations and discussed a slide contained in the packet, which was a breakdown of the age groups. He asked if they were happy with the breakdown and the percentage of the age group they were able to capture. He noted that when they first started down this road that had been one of their past challenges. He questioned whether the group felt that a need existed to expand those percentages and, if so, he would like to know how they would go about doing that.

Ms. Koester-Thomas responded that all feedback was good feedback and they certainly wanted to hear from everybody. She said that they wanted to make the process an inviting one. She added that as far as the demographics related to who they heard from, it did not necessarily match with the exact demographic that exists in Fountain Hills. She stated that one of the ways they were addressing that was in instrumentality, specifically methodology, and said that when they looked at the actual breakdowns of how they qualified the age groups they would see and that there was a group of people between the ages of 36 to 50 and then the next age group was 51 to 65. She noted that they had heard from several people in the 51 to 65 years of age range and they were really upset that they had to check the box indicating they were between 51 and 65 years of age. She stated the opinion that a large percentage of those in the 51 to 65 age bracket were closer to 51 than 65 and if they had done a different breakout, mirroring perhaps the Census breakout, then they would have had a little bit better representative look.

Councilmember Leger pointed out that that was one of the biggest criticisms the last time around - groups that felt they were not properly represented.

He added that a second slide that was not presented this evening but was referenced to had to do with diverging viewpoints and urged the members of the Council and public to review this data if they had not already done so. He said that it spoke to the challenge of doing a Strategic Plan and the fact that the viewpoints were "night and

day." He questioned how they would go about addressing that challenge (i.e. the "likes versus the dislikes") and emphasized the importance of looking at the critical mass.

Ms. Koester-Thomas cautioned the Council about expecting that at any point in time the Strategic Planning Process that it would provide uniform, 100% consensus on any point. She said that one of the ways they were going to try to meet this challenge was to provide a document that talked a little more philosophically about how the Town wanted the Council to do business. She added that staff was going to provide the Council with initiatives to ultimately reach those goals or objectives and they were going to make those decisions, but they were going to remove some of the nuance details that made it a checkmark list. She further stated that in moving forward they felt confident that there was consensus related to the philosophy of how Fountain Hills did business.

Councilmember Leger reiterated his appreciation to the SPAC and said that he looked forward to talking with them in greater detail.

Mayor Schlum asked how the SPAC was going to obtain input from the businesses and include them in the process.

Ms. Koester-Thomas said that in their reconnaissance efforts they had talked with small businesses as well as the Chamber about how they could better include businesses in the community. She noted that they had done this in a couple of ways already by meeting with the Chamber and the downtown businesses and being able to partner at this point as the Chamber and the Town deliver a vision product for downtown (finding the opportunity to maybe pick that up). She added that they also had some small business owners that sit on the Planning Team, the group of residents that was providing feedback to the SPAC throughout the process. She advised that they were using the Chamber specifically as a way to get information out. She further stated that the Fountain Hills Leadership Group that was sponsored by the Chamber of Commerce was one of the first groups they had met with. She stated that the SPAC was specifically sensitive to this issue and she believed they would see, and had already seen in the feedback obtained, that there was a desire to have a Strategic Plan that talked to business vitality and this would be an obvious effort as they moved forward.

Mayor Schlum asked why cost was not going to be a factor and Ms. Koester-Thomas referred to the budget document that covered costs to implement strategies and said they were not going to include that because it was difficult to put a price on implementation of a philosophy. She stated that they hoped that this document would be the over-riding philosophy that the Town implements and on a yearly basis, as they identify their goals and staff provided an action plan for them, that was where they would get to see the costs of implementation and make the decisions for implementing the Strategic Plan. She added that they hope that this document would be more of a "living document" that would ultimately represent the foundation of what Fountain Hills valued moving forward. She stated that while it would be "tweaked" on an annual basis, at the end of the day it never went out of date. She said that it would always continually fulfill the vision of Fountain Hills. She advised that when they removed specific projects from the Strategic Plan and put them into an annual staff action plan document, which staff would be able to provide to the Council as they considered the Council's annual goals at the beginning of the year. She expressed that perhaps that was a better way of moving forward and ultimately providing a better budget tool.

Mayor Schlum commented on the fact that a lot of people watched Channel 11 and urged the public to be responsive whenever they see an opportunity to share their opinions and/or fill out a survey or serve and help the SPAC in their continuing efforts to look at the Town's Strategic Plan. He reiterated his appreciation to all of the community volunteers, Ms. Koester-Thomas and the members of the SPAC.

(Councilmember Contino left the dais at 7:39 p.m. and returned at 7:43 p.m.)

AGENDA ITEM #10 - CONSIDERATION OF RESOLUTION 2009-27, APPROVING AN INTERGOVERNMENTAL AGREEMENT (IGA) WITH THE FORT MCDOWELL YAVAPAI

NATION RELATING TO 2008-09 PROPOSITION 202 FUNDINGS IN THE AMOUNT OF \$183,998, AND AUTHORIZING THE EXPENDITURES TO THE FOLLOWING ENTITIES ONCE THE FUNDS ARE RECEIVED: (i) THE RIVER OF TIME MUSEUM IN THE AMOUNT OF \$5,000; (ii) THE FOUNTAIN HILLS CHAMBER OF COMMERCE VISITOR'S BUREAU IN THE AMOUNT OF \$70,000 AND (iii) THE FOUNTAIN HILLS UNIFIED SCHOOL DISTRICT #98 IN THE AMOUNT OF \$108,998.

Mr. Davis addressed the Council relative to this agenda item. He reminded the Council that they had historically served in a conduit type of role through which these funds flowed. He noted that it was required that they approve an Intergovernmental Agreement (IGA) to allow them to fulfill that role and that was what was before the Council this evening for consideration.

Councilmember Hansen asked whether the Town had ever applied for any 202 funds for any project and Mr. Davis replied that they had.

Councilmember Hansen said that it looked like a good opportunity to perhaps move forward on transportation related projects and Mr. Davis concurred. He added that consideration was given to a variety of projects when an opportunity arises.

Vice Mayor Archambault **MOVED** to approve Resolution 2009-27 and authorize the expenditures upon receipt of the funds from the Fort McDowell Yavapai Nation and Councilmember Leger **SECONDED** the motion.

Councilmember Dickey referred to an article that explained some of the things going on down at the Legislature and discussed lobbying efforts relative to "racinos" and allowing the horse and dog racing industry to let their clients have casino style gaming at those events. She said that the tracks would give the State more money than they presently receive from the tribes. She noted that the most recent figures from the Department of Gaming was that the annual contribution to the State right now was about \$110 million and half of that went to education and part of that went to medical emergency services. She said that on top of the \$110 million the tribes gave a little over \$15 million to cities, towns and counties. She advised that those dollars would go away if lawmakers allowed the tracks to have casino gaming and explained that in 2002, Proposition 202 (the ballot measure itself) absolved them from the need to share revenue if off-reservation gambling was ever allowed to increase. She said that she believed \$750,000 had been received by the Town and its neighbors since inception. She further stated that from what she understood in general, tribal officials were spending time at the Legislature trying to fend off this effort. She urged everyone to keep an eye on this issue and to find out how the Town's neighbors feel about this proposal.

Mayor Schlum thanked Councilmember Dickey for her remarks.

In response to a question from the Mayor, Town Clerk Bev Bender advised that there were no citizens wishing to speak on this agenda item.

The motion **CARRIED UNANIMOUSLY** (7-0).

AGENDA ITEM #11 - PUBLIC HEARING TO RECEIVE COMMENTS ON A PROPOSED SPECIAL USE PERMIT TO ALLOW ALLTEL WIRELESS COMMUNICATIONS TO ALLOW THE INSTALLATION OF A 65-FOOT TALL CELLULAR MONOPALM TOWER AT 17332 RAND DRIVE, LOCATED IN A C-2 ZONING DISTRICT. (CASE #SU 2009-01).

Mayor Schlum declared the public hearing open at 7:44 p.m.

Senior Planner Bob Rodgers addressed the Council relative to this agenda item and explained that the request required a Special Use Permit for two reasons: (1) It exceeded the allowed Zoning District height limitation of 40 feet and (2) It did not meet the 100% or 65 foot distance fall down setback required by the Zoning Ordinance.

He advised that the property was currently owned by the Fountain Hills Unified School District and was being used for bus parking and a maintenance facility.

Mr. Rodgers referred to a site plan of the property displayed in the Council Chambers and explained the location and surrounding areas. He noted that if the tower were to fall, it would either fall on a building within the parking lot on Rand Drive or across the alley.

Mr. Rodgers advised that staff had recommended that the Council deny the proposed Special Use Permit due to the tower's location, height, and inability to meet the setback requirements. He added that the Planning & Zoning Commission disagree with staff's recommendation and forwarded a recommendation for approval to the Council subject to the three conditions contained in the Staff Report. He said that the Commission felt that the location, although it did not meet the specific requirements, was appropriate and did not pose a significant hazard to others.

Mr. Rodgers indicated his willingness to respond to questions from the Council.

Ms. Bender advised that two citizens wished to address the Council relative to this agenda item.

Michael Campbell, a consultant for Alltell Wireless Communications, addressed the Council and thanked them for the opportunity to speak this evening. He also thanked Mr. Rodgers for his efforts. Mr. Campbell said that from day one they were aware of the fact that a Special Use Permit would be required and they had a very good meeting with Planning & Zoning to discuss the issues. He advised that Sabre Towers issued a letter that indicated the fall down radius and the bendability of this structure. He noted that he had been in the business for 15 years and had only seen one go down and that was man assisted rather than an act of nature. He requested support for the proposal and indicated his willingness to respond to questions from the Council.

Mayor Schlum asked whether other locations had been considered for the pole in that area and Mr. Campbell replied that the original locations were the Saguaro carwash, about a block and a half south and also the Community Theater property. He said that they could not place it down by the housing and the proposal was as far north as the engineer could stretch it.

Mayor Schlum asked if a need really existed to build another tall structure such as this (be it a palm tree or a pole) when relatively nearby those assets were already in place at the Desert Vista Park that one cellular company was already utilizing. He added that if it was an engineering issue then he could understand the reasoning.

Richard Kloster, President of the Eagle Mountain Homeowners' Association, addressed the Council and said that the Council was fully aware of the Verizon cellular towers at Eagle Mountain Parkway and Shea Boulevard, for which the Town received revenue. He noted that there were two huge Saguaro cacti and people did not even recognize that they were synthetic and they blended well with the terrain and the community. He advised that representatives of the Eagle Mountain Golf Course have had conversations with Alltell relative to doing something like that for them and the Inn at Eagle Mountain already had T-Mobile (a saguaro with two or three arms that looked very authentic). He said he was wondering whether the Town might have missed an opportunity to invite cellular companies to survey the Town's properties (the boundaries) to locate ideal locations that would boost their signal power for a lot of cell phone users. He stated that rather than placing them in areas like parks or next to schools, it would be better to locate better spots for them. He said that the Town Manager could locate areas where the Town could find a way to provide access to the property (Firerock or some other golf course). He urged the Council to pursue his recommendation. He stated that he also was curious about the revenue that was being proposed by the cellular companies because it might be something that the Town wanted to negotiate. He said that the only time his HOA would approve the location of a tower would be if the company located a site that was common area and would not be objectionable in any way to any homeowner.

Mayor Schlum thanked the speakers for their input. The Mayor requested that Mr. Davis speak to the discussion that had taken place between staff and the wireless providers.

Mr. Davis advised that there were several locations throughout the Town where they hosted cellular towers and Ms. Ghetti told him at one point what the revenue figure was and the offset to the general fund was considerable.

Mayor Schlum asked staff to address the issue of planning as presented by the previous speaker and Mr. Rodgers stated that within the last couple of weeks he had spoken to six different cellular companies. He added that the only time they came before the Council was when they required a Special Use Permit or needed to have a contract signed because they were on Town property. He noted that there were quite a number of cell towers on Town-owned property and dialogue took place on a regular basis.

The Mayor stated that the contracts were public and citizens could see the information in the packet on-line to learn what the revenue figure was. He noted that this tower would be located on school property.

Councilmember Dickey asked if the stipulations that the Planning & Zoning Commission had put together addressed the poles falling down.

Mr. Rodgers replied that they did not address that specific issue. He reiterated that staff recommended denial but said that if P&Z was going to approve it, staff had provided some recommended stipulations, which the Commission did add.

Councilmember Leger asked whether staff had recommended an alternative site and Mr. Rodgers advised that they had. He referred to a slide that depicted the alternative site.

Councilmember Leger asked whether the alternative site would require a Special Use Permit and Mr. Rodgers said that it would require one because of the height but not because of the setbacks.

Councilmember Leger noted that the manufacturer's report on the poles did not rule out failure and stated that if it did fall due to wind, there were two possibilities: (1) It was bent over, which was less of a problem for surrounding properties and (2) If there was total failure it would be a 54-foot radius. He asked what harm it would do if it fell within that radius.

Mr. Rodgers responded that at the proposed location it would hit the School's building or something in the parking lot (vehicles, etc.).

Councilmember Leger asked why the alternative site was not considered if in fact, there would be less liability for the cell tower company and the Town. Mr. Rodgers replied that it was his understanding that the School District had asked that it not be placed inside their gate. He said that they were worried about them getting in there to maintain it.

Discussion ensued relative to the distance between the two location sites.

Mr. Campbell advised that the company had worked with the School District on this issue and they felt that the proposed location was the best site. He added that P&Z felt that if the pole did fall it would impact the District but that there was not substantial potential property damage to the east or the south (95 feet to the east before it hits the reservation property line and a good distance to the south so it would land in the middle of Rand Drive, which was not a traffic area).

Councilmember Leger stated that he had a difficult time approving something that staff clearly did not approve of and had recommended an alternative site that was safer. He asked who would be liable if the pole did fall.

Town Attorney Andrew McGuire said that he could not even speculate on who would pay the lawsuit and added that whenever something like this happened "the broadest net was cast" and people would attempt to bring whomever into the litigation. He stated that he did not believe that the Town had been named in any litigation regarding its cell facilities. He added that clearly there were two to three levels of groups in between the Town and liability, the cell provider and the owner of the property, the School District and then whoever caused the tower to fall. He stated the opinion that there was not a significant risk to the Town but he would be hesitant to say that there would be no risk.

Councilmember Hansen said that it appeared that there was a screen wall at the proposed location between the tower and the School District's building and asked if that would help break the fall. She added that the alternate location would be in the parking lot, which she believed would look odd. She noted that they were talking about adding three other palm trees around this and it would certainly look more natural and fit into the area. She added that the School District's letter asked the Council to look favorably upon this request because it would be a benefit to the District and she did respect that. She asked if something could be included in the agreement saying that the School District accepted any responsibility or liability and the Town, in approving this, was not accepting any liability.

Mr. McGuire stated the opinion that the Town would not be a party to any agreement that would go into but clearly, after this discussion, in the motion it could be noted that the Town was making the accommodation at the School District's request. He said that that it could be a consideration later on down the road should something occur but he did not know whether it would really matter.

Discussion ensued relative to the Vice Mayor's inquiry as to how close the site was to the reservation property; the fact that the power lines ran just inside it; the fact that the towers were structurally engineered with a very high wind and weight loading; the fact that they were designed like traffic signals, which were designed to give and stretch and not necessarily just snap off when they were hit; the fact that the sway of the structures was limited to approximately three degrees (3% sway); the fact that over the past ten years there had been a dozen or so cell sites in Town and despite storms that had occurred none of them had come down; and the Vice Mayor's comment that he was fairly comfortable with the location and believed it would be engineered well but he would have liked to have talked with the engineer because he knew that the reason they put rebar in concrete was to give it strength but it also allowed it to stretch and bend and give a warning.

Vice Mayor Archambault asked whether the poles were designed for 100 m.p.h. winds or 120 m.p.h. winds, etc. and Mr. Campbell advised that he did not know the answer to that question right now.

Councilmember Dickey commented on the surrounding properties and stated that she knew that the theater was on Town property but questioned whether there was any input received from the owners of the condos or the art gallery.

Mr. Rodgers advised that staff had sent out letters but did not receive any responses from the surrounding properties.

Councilmember Brown asked whether staff's objection was based on the potential of the tower falling on the School District's building and Mr. Rodgers stated that staff's main objection was the possibility of the pole falling across the right-of-way. He noted that the last one they did was located in the middle of the Park and said that there were a number of communication cells on street lights and those were on Town property.

Councilmember Brown commented that he was opposed to going against any of staff's decisions but said that if the School District did not mind it despite the fact that it could hit their building and they did not want it in their parking lot, he said "no foul, no harm."

There being no additional questions, the Mayor closed the public hearing at 8:13 p.m.

AGENDA ITEM #12 - CONSIDERATION OF A PROPOSED SPECIAL USE PERMIT TO ALLOW ALLTELL WIRELESS COMMUNICATIONS TO ALLOW THE INSTALLATION OF A 65-FOOT TALL CELLULAR MONOPALM TOWER AT 17332 RAND DRIVE, LOCATED IN A C-2 ZONING DISTRICT. (CASE #SU 2009-01).

Councilmember Hansen **MOVED** to approve the Special Use Permit for Alltell Wireless Communications to allow a 65-foot tall monopalm cell tower at 17332 Rand Drive, subject to the stipulations recommended by the Planning & Zoning Commission as outlined in the Staff Report and Councilmember Brown **SECONDED** the motion.

Vice Mayor Archambault questioned whether the cell tower would be inspected by the Town and Mr. Rodgers advised that it would be despite the fact that it was located on School property.

The motion **CARRIED** by majority vote (6-1), with Councilmember Leger voting Nay.

AGENDA ITEM #13 - CONSIDERATION OF APPROVING THE CANCELLATION OF THE FOUNTAIN HILLS TOWN COUNCIL SEPTEMBER 3, 2009 REGULAR MEETING DUE TO THE FACT THAT THE COUNCIL WILL BE ATTENDING THE LEAGUE OF ARIZONA CITIES AND TOWNS ANNUAL CONFERENCE THAT IS SCHEDULED TO BE HELD SEPTEMBER 1, 2009 THROUGH SEPTEMBER 4, 2009.

Councilmember Hansen **MOVED** to approve cancellation of the Fountain Hills Town Council September 3, 2009 Regular Council meeting and Councilmember Dickey **SECONDED** the motion, which **CARRIED UNANIMOUSLY** (7-0).

Mayor Schlum announced that there would be no meeting on the first Thursday in September but the Council would meet on the third Thursday of that month.

AGENDA ITEM #14 - QUARTERLY UPDATE BY THE DIRECTOR OF PLANNING AND ZONING ON ACTIVITIES AND PROJECTS.

Planning and Zoning Director Richard Turner addressed the Council relative to this agenda item and highlighted a PowerPoint presentation on activities and projects for the quarter. Mr. Turner provided a brief recap of the General Plan Update that they had been involved in since the fall of 2007 and reported that very good progress was made during the first few months. He added that in January 2008 the Ellman Companies filed their application on their acreage in the northeast part of Town for a General Plan Amendment and requested rezoning for other things. He stated that staff did not want to revert attention from that application if they were going to compete with them with the General Plan Update so they kind of put that on the back burner and that slowed things down a bit. He said that the Ellman Project was approved in May 2008 and following that it had been challenged in Court and that was all resolved in April of this year. He informed the Council that at that time staff began with renewed purpose on the General Plan Update. He reported that the Committee that was formed to review the Update had met twice within the last quarter and stated that at their next meeting on August 13th they would have had the opportunity to review a complete draft of that Plan. He added that they had also sent the Plan to various Town departments for their comments.

Mr. Turner discussed the next steps to be taken and said that staff hoped to finish the Committee review during August and then in September follow the mandated State required transmittal of the plan to State and regional agencies. He said that they would also place the Plan on the City's website and invite the public to comment on it. He added that they would hold a public Open House and all of that would take place in September. He reported that they also planned to have Work Studies before the Town Council and the Planning & Zoning Commission in October, followed by two public hearings by the Planning & Zoning Commission at different locations. He reported that Council consideration would occur in December.

Mr. Turner also commented on various regulation changes that had taken place as well as environmental initiatives, work load measurements and the status of the green pools issue. Mr. Turner indicated his willingness to respond to questions from the Council.

Mayor Schlum thanked Mr. Turner for his presentation.

AGENDA ITEM #15 - CONSIDERATION OF AUTHORIZING THE MAYOR TO EXECUTE A LETTER APPROVING THE TOWN MANAGER'S PARTICIPATION IN PEER REVIEW SESSIONS IN 2009 (i) IN CLEARFIELD, UTAH AND (ii) IN PARKLAND, FLORIDA.

Mr. Davis addressed the Council relative to this agenda item and explained that during contract negotiations for his employment with the Town he indicated that he had enjoyed in the past the opportunity of being asked to participate in a process that was very similar to a peer review. He said that he was asked to lend some help to a couple of communities in Florida (Del Ray Beach and Daytona Beach) and they were very successful and enjoyable opportunities that aided a lot of his education. He noted that he had brought back a lot of ideas to his community and he had stated about a year ago that such possibilities might one day surface again and they had. He said that he was honored to have been asked to participate in these sessions and pointed out that Clearfield, Utah bordered Westfield, Utah and so for them to ask him to come back and help them with an issue on his own time and utilizing his own monies was a great privilege. He stated that the other city was Parkland, Florida, which was basically a product of the work he had done in Daytona Beach and Del Ray Beach, Florida.

Mr. Davis informed the Council that he would not be attending the ICMA Conference and added that the peer sessions might serve to aid him in his credentialing. He asked for the Council's support regarding his request to take advantage of this educational opportunity.

The Mayor said that he could see the benefit derived from such opportunities both for Mr. Davis and the Town. He pointed out that Mr. Davis would be utilizing his vacation time to attend the sessions.

Mr. Davis advised that the time involved was not considerable; in one case he might not be gone at all (done remotely) and in the other case it would be done on a Friday. He said that he might wind up taking one vacation day. He added that he could essentially use the experience to try out new ideas.

Councilmember Dickey **MOVED** to approve authorizing the Mayor to execute a letter approving the Town Manager's participation in peer review sessions in 2009 in Clearfield, Utah and Parkland, Florida, specific dates to be provided (yet to be determined) and Vice Mayor Archambault **SECONDED** the motion, which **CARRIED UNANIMOUSLY** (7-0).

AGENDA ITEM #16 – QUARTERLY UPDATE BY THE TOWN MANAGER ON IMPLEMENTING THE COUNCIL GOALS.

Mr. Davis addressed the Council relative to this agenda item and reported that in February 2008, the Council identified eight primary goals for the last fiscal year and highlighted a single PowerPoint slide, which outlined the goals. He said that staff was happy to report that all of the Council's goals were realized for the last Fiscal Year except the one pertaining to ensuring responsible development of the Ellman Property for reasons previously discussed. He suggested that perhaps in the future the goal should be phrased a little bit differently so that it allowed staff a chance to accomplish things within their circle of influences. He noted that this one fell out of their circle of influence and there was not a lot that staff could do about that one but the other goals were accomplished and staff was happy to present those this evening.

(Councilmember Leger left the dais at 8:29 p.m. and returned at 8:32 p.m.)

Mr. Davis complimented staff on the tremendous job they had done this year, not only coming in way under budget and in the black but also for their participating in the realization of these goals.

Mayor Schlum thanked Mr. Davis for his update and acknowledged the achievements that had resulted over the past year.

Councilmember Hansen asked whether staff had received any updates from Ellman on their activities and/or progress and Mr. Davis replied that they had not heard anything from them.

Councilmember Dickey commented on implementing the Environmental Plan and said that they were all working on getting volunteers together, which was part of implementing the Plan. She added that she was very pleased that they were moving ahead with that and just wanted to thank staff at this time.

AGENDA ITEM #17 - DISCUSSION WITH POSSIBLE DIRECTION TO STAFF RELATING TO INFORMATION TO BE GATHERED AND TOPICS TO BE COVERED AT THE SEPTEMBER 8, 2009 TOWN COUNCIL WORK STUDY SESSION, INCLUDING DISCUSSION OF OFFICIALS' ROLES UNDER THE COUNCIL-MANAGER FORM OF GOVERNMENT.

Mr. Davis addressed the Council relative to this agenda item and stated that several weeks ago the Mayor and he had met and the Mayor had thought that in light of some of the results they had gotten out of the feedback received from the public and due to having a new Councilmember on board and two new Councilmembers that came on last year, this was probably an opportune time to provide some clarifications or at least a refresher course from the League as to the Town's form of government. He noted that this would also be something that would benefit the public.

Mr. Davis said that forms of government were a very tricky subject and in other states there had been no end to debate about this issue and confusion as well. He stated that in the state he came from one year the Legislature floated a bill that would have mandated all cities to have a Council-Manager form of government and in the subsequent year they floated a bill that would have eliminated that form of government. He added that this was something they needed to understand and it was good information for the public as well. He advised that staff had contacted the League and Tom Belshe would be appearing before the Council on September 8th to bring forward this type of information.

Mayor Schlum commented that the League was a good group to help the Town with that issue and added that he wanted to be clear his intention was not to change their Councilmember-Manager form of government or anything like that because he thought it was working quite well. He said that he believed it would be a good opportunity for them to be trained/refreshed on what they could do as Councilmembers and how they were to interact with one another and staff. He added that he hoped that this evening they could make sure that any questions they had were brought up so that staff could be prepared with the League to respond questions at the Work Study Session.

Mr. Davis pointed out that the Council-Manager form of government had been the prominent form of local governance for the last 100 years and said that was significant. He stated that this form of government had been well tested and the majority of larger cities live with this form of government. He reported that over 90 million Americans live in communities where the Council-Manager form of government was in place.

Mayor Schlum said that he would like to talk about the format and why the Council-Manager form of government was so popular (the structure of it as well). He added that he would also like to see discussion occur relative to Councilmembers' individual authority versus the overall group authority. He stated that he would also like to bring into the mix the Town Code and those things that guide the Councilmembers (duties and responsibilities).

Councilmember Dickey commented that she wanted to see this item placed on an agenda so they could discuss it. She said that she hoped to accomplish discussions at that meeting such items as Council interactions with staff (in a way that would allow for recommendations and direction from the League) and each other to improve conditions in the future. She stated that she felt the need to bring this forward so that they could all be together

at once to talk about these things and listen as well about how they could move forward towards some resolutions to any conflicts that they had or that might have been occurring over the past months. She stressed the importance of becoming very familiar with the codes and laws that guide their ethical behavior. She added that the Session on September 8th would provide an opportunity to discuss proper procedures. She advised that she was not calling for any steps to be taken at this time and noted that especially during these difficult economic times staff was stressed and trying to do more with less and as a Councilmember she felt responsible to do what she could to try and alleviate some anxieties, fears and any kind of uncomfortable situations in the workplace before it could erode all of their abilities to serve this community. She expressed appreciation to the Council for this chance to explain why she wanted to see this item on an agenda and she hoped that they would come full circle and have a serious, honest and courageous discussion on this issue in an effort to define and confirm their rights, their limitations, their responsibilities with each other, staff, and the community at large.

Mayor Schlum said that hopefully this session would be televised on Channel 11 because he believed this discussion would also be very helpful to the public. He stated that when they went through the election process in particular they had the public say "you need to do this" or "you need to do that" and for the most part many believed that the Council was able to tell staff what to do. He noted that that was not the role of the Council and there were a lot of other misconceptions that could be clarified. He explained that the Council served in a role similar to that of a Board of Directors and then staff, led by Mr. Davis, gets the job done based on the guidelines, principles and policies that the Council sets. He added his appreciation to the League for participating in the meeting and lending their expertise.

Vice Mayor Archambault advised that he too had requested that this item be placed on the agenda and said he was looking into the Council-Manager form of government and he would like the League to address the broad authority of a Manager to run the Town (how far did his authority go) and discuss the differences between setting policy and giving direction. He added that the Council as a whole tries to set policy but sometimes they fall into the trap of trying to give direction instead. He said he would also like to have them cover what it meant to say "equitably serve the community." The Vice Mayor stated that oftentimes they had groups come before them with specific causes but their causes did not serve the community and he had to fight all the time to sit back and ponder whether this was good for the community as a whole. He emphasized the importance of clarifying what that term really meant. He agreed that they should also talk about the power of individual Councilmembers compared to the body as a whole. He added that he would also like discussion to take place relative to when the citizens should be engaged in policy making and said that that was often a point that was lost on the Council because citizens looked to them to make decisions but oftentimes they lost sight of the fact that there was a point where the Council could not make that decision as a body and they had to go to the citizens for that.

The Vice Mayor further stated that he would also like to have expanded discussion on the Town Manager's roles with regards to his duties associated with running the Town and making the day-to-day decisions. He said that Mr. Davis could expand on that subject. He noted that he knew the general rules and regulations that Mr. Davis followed but what was more important to him was learning the difference between a Manager who was ICMA Certified and one that was not.

Mr. Davis advised that all members of ICMA were committed to a Code of Ethics and added that a credentialed Manager (ICMA CM) had obtained credentials that recognized his tenure in the profession as well as certain skill levels and a commitment to lifelong or career long learning in the profession. He noted that he was required to obtain a considerable amount of training every year and then report on that and give a new report the following year. He stated that he had had citizens and friends ask him what a Town Manager did as opposed to a Mayor or Councilmember and he replied by giving them an example of a corporate organizational structure where you had a Chairman of the Board who would be the Mayor, a Board of Directors who would be the Councilmembers and a Chief Executive Officer who would be the Town Manager. He explained that the Boardmembers represented the stockholders, people with ownership in that organization, which in the case of a Town would be the citizens.

Vice Mayor Archambault further requested that discussion take place relative to staff's roles and Council's roles and interactions. He said that Mr. Davis has given the Council the latitude to go to staff and ask questions but one of the things he found somewhat confusing was how staff seems to just drop what they were doing if he dropped into one of their offices. He stated that that was not what he wanted them to do. He added that the mentality existed that "here's an elected official walking into my office so I am just going to stop what I am doing." He said that a certain amount of respect had to be transferred back and forth and so he felt some discussion about what would be appropriate for Council (guidelines) would be very helpful (should they call ahead, make an appointment, etc.).

Mr. Davis advised that he had served under elected officials who had done both and he had never begrudged them doing either one. He said that his recommendation would be for the Council to ask staff what they would prefer and added that he was fairly confident that whether as an elected official or as a citizen walking in that staff would have the same reaction.

Vice Mayor Archambault commented that he would like to obtain some input from staff on how they would like the Council to interact with them and added that there should be some general guidelines in place.

Councilmember Contino agreed with Councilmember Archambault's comments and stated that he did not want to impose on staff. He advised that staff had always been very accommodating.

The Mayor said that if staff had ideas about areas that the Council was not questioning that should be brought forward in an effort to establish a better working relationship he would like them to do so.

Councilmember Dickey expressed appreciation to Councilmember Leger for requesting an explanation of the Council-Manager form of government and stated that that would help serve as a guide. She reiterated the importance of having an honest and courageous discussion at the meeting.

Mayor Schlum said that as they always do he would look to having a professional, respectful and dignified dialogue that was focused on adding value to the community.

AGENDA ITEM #18 - DISCUSSION WITH POSSIBLE DIRECTION TO THE TOWN MANAGER, TOWN ATTORNEY AND LITIGATION COUNSEL REGARDING THE FIREROCK TAX LITIGATION.

Due to a conflict of interest regarding this agenda item, Councilmember Hansen left the dais at 8:49 p.m. and returned at 8:50 p.m.

Vice Mayor Archambault **MOVED** to authorize and direct the Town's Litigation Counsel, the Town Manager and the Town Attorney to take all steps necessary to conclude the Firerock's tax litigation and to pay the amounts necessary to satisfy the stipulated judgment entered in the case and Councilmember Leger **SECONDED** the motion, which **CARRIED UNANIMOUSLY** by those present and voting (6-0).

AGENDA ITEM #19 – COUNCIL DISCUSSION/DIRECTION TO THE TOWN MANAGER. ITEMS LISTED BELOW ARE RELATED ONLY TO THE PROPRIETY OF (i) PLACING SUCH ITEMS ON A FUTURE AGENDA FOR ACTION OR (ii) DIRECTING STAFF TO CONDUCT FURTHER RESEARCH AND REPORT BACK TO THE COUNCIL:

A. NONE.

AGENDA ITEM #20 - SUMMARY OF COUNCIL REQUESTS AND REPORT ON RECENT ACTIVITIES BY THE TOWN MANAGER.

Mr. Davis encouraged everyone to check out the blog if they had not already done so and advised that items were placed on it on a daily basis. He advised that he had one follower right now (Councilmember Hansen) and hoped to build an audience slowly. He indicated his intention to print them out and place copies in the Council's boxes for their information and review. He explained that the blog allowed him to be a little bit more descriptive as far as broader issues.

Mayor Schlum thanked Mr. Davis for his efforts to communicate in any manner that might prove helpful.

AGENDA ITEM #21 – ADJOURNMENT.

Councilmember Hansen **MOVED** that the Council adjourn the meeting and Councilmember Contino **SECONDED** the motion, which **CARRIED UNANIMOUSLY** (7-0). The meeting adjourned at 8:50 p.m.

TOWN OF FOUNTAIN HILLS

By _____
Mayor Jay T. Schlum

ATTEST AND
PREPARED BY:

Bevelyn J. Bender, Town Clerk

CERTIFICATION

I hereby certify that the foregoing minutes are a true and correct copy of the minutes of the Executive and Regular Sessions held by the Town Council of Fountain Hills on the 6th day of August 2009. I further certify that the meeting was duly called and that a quorum was present.

DATED this 20th day of August 2009.

Bevelyn J. Bender, Town Clerk